



City of Seattle

Department of Planning and Development

Diane M. Sugimura, Director

CITY OF SEATTLE ANALYSIS AND DECISION OF THE DIRECTOR OF THE DEPARTMENT OF PLANNING AND DEVELOPMENT

Application Number: 3012410
Applicant Name: Mark Ward
Address of Proposal: 9701 Rainier Avenue S

SUMMARY OF PROPOSED ACTION

Shoreline Substantial Development Application to allow 2,215 sq. ft. addition to existing structure for a restaurant in an environmentally critical area. Surface parking for 22 vehicles will be provided on the site.

Seattle Municipal Code (SMC) requires the following approvals:

SEPA - Environmental Determination - Chapter 25.05, Seattle Municipal Code.

Shoreline Substantial Development Permit – To allow a restaurant in an Urban Stable (US) shoreline environment, Section 23.60.608, Seattle Municipal Code.

SEPA DETERMINATION: ☐ Exempt ☐ DNS ☐ MDNS ☐ EIS
 ☒ DNS with conditions
 ☐ DNS involving non-exempt grading or demolition
 or another agency with jurisdiction.

BACKGROUND DATA

Site and Vicinity Location and Zoning Designations

The site is located on the west side of Rainier Avenue S, immediately south of S Pilgrim Street. The site is zoned Neighborhood Commercial 1, with a 30' height limit (NC1-30). The eastern portion of the site also is in the Urban Stable (US) Shoreline environment. Properties near the subject site are primarily single-family residences, and are zoned Single-Family 5000.

Proposal Description

The proposed project involves renovation of two existing stone buildings and addition of one new building; all the buildings would function together as a restaurant. A total of 17 parking spaces will be provided (a reduction of 5 from the original permit submittal.)

Public Comments

The SEPA comment period for this project ended on February 10, 2012; no comment letters were received.

ANALYSIS – SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

Section 23.60.030 of the Seattle Municipal Code provides criteria for review of a shoreline substantial development permit and reads: “A substantial development permit shall be granted only when the development proposed is consistent with:

- A. The policies and procedures of Chapter 90.58 RCW;*
- B. The regulations of this chapter; and*
- C. The provisions of Chapter 173-27 WAC.*

“Conditions may be attached to the approval of a permit as necessary to assure consistency of the proposed development with the Seattle Shoreline Master Program and the Shoreline Management Act.”

The Policies and Procedures of Chapter 90.58 RCW

Chapter 90.58 RCW is known as the Shoreline Management Act of 1971. It is the policy of the State to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy contemplates protecting against effects to public health, the land use and its vegetation and wild life, and the waters of the state and their aquatic life, while protecting public right to navigation and corollary incidental rights. Permitted uses in the shoreline shall be designed and conducted in a manner to minimize, insofar as possible, any resultant damage to the ecology and environment of the shoreline area and any interference with the public’s use of the water.

The Shoreline Management Act provides definitions and concepts, and gives primary responsibility for initiating and administrating the regulatory program of the Act to local governments. The Department of Ecology is to primarily act in a supportive and review capacity, with primary emphasis on insuring compliance with the policy and provisions of the Act. As a result of this Act, the City of Seattle and other jurisdictions with shorelines adopted a local shoreline master program, codified in the Seattle Municipal Code at Chapter 23.60.

Development on the shorelines of the state is not to be undertaken unless it is consistent with the policies and provisions of the Act, and with the local master program. The Act sets out procedures, such as public notice and appeal requirements, and penalties for violating its provisions.

The proposal is subject to the Shoreline Policies of SMC 23.60.004 because a portion of the site is located within the shoreline district and the cost of the project exceeds \$2,500. The proposed development has been designed to ensure minimum impact to the public health, land and waters of the state, and their aquatic life. The location of the proposed work on the shoreland will not interfere with the public rights of navigation and corollary rights, thus providing for the management of the shorelines by planning for and fostering all reasonable and appropriate uses. Therefore, the subject application is consistent with the procedures outlined in RCW 90.58.

A. The Regulations of Chapter 23.60

Chapter 23.60 of the Seattle Municipal Code is known as the “Seattle Shoreline Master Program”. In evaluating requests for substantial development permits, the Director must determine that a proposed use meets the approval criteria set forth in SMC 23.60.030 (cited above). Development standards of the shoreline environment and the underlying zone must be considered, and a determination made as to any special requirements (shoreline conditional use, shoreline variance, or shoreline special requirements use permit) or conditioning that is necessary to protect and enhance the shorelines area (SMC 23.60.064).

Pursuant to SMC 23.60.064C, in evaluating whether a development which requires a substantial development permit, conditional use permit, variance permit or special use authorization meets the applicable criteria, the Director shall determine that the proposed use: 1) is not prohibited in the shoreline environment and the underlying zone; 2) meets all applicable development standards of both the shoreline environment and the underlying zone; and 3) satisfies the criteria for a shoreline variance, conditional use, and/or special use permits, if required.

SMC 23.60.004 – Shoreline Policies

The Shoreline Goals and Policies which are part of the Seattle Comprehensive Plan’s Land Use Element and the purpose and locational criteria for each shoreline environment designation contained in SMC 23.60.220 must be considered in making all discretionary decisions in the shoreline district. A land use goal for the shoreline is to “Locate all non-water dependent uses upland to optimize shoreline use and access” (Shoreline Use Goals, LUG41). One of the shoreline use policies states that “On upland lots: Preferred uses are those that complement uses on adjacent waterfront lots” (Shoreline Use Policies, LU232, #2). The proposed use is non-water dependent, and is appropriately located on an upland lot, separated from Lake Washington by Rainier Avenue S. Waterfront lots near the subject site are occupied by single-family houses; the restaurant use proposed for this site could be patronized by local residents, and would reasonably complement the predominant single-family use in the area.

Development Standards

The proposal is permitted outright in SMC 23.60.608 governing upland lots in the Urban Stable (US) shoreline environment, and therefore is subject to:

1. *The general development standards for all shoreline environments (SMC 23.60.152);*
2. *The development standards for uses in the US environment (SMC 23.60.630); and*
3. *The development standards for Neighborhood Commercial zones (SMC 23.47).*

General Development Standards for all Shoreline Environments (SMC 23.60.152)

All uses and developments shall be subject to the following general development standards:

- A. The location, design, construction and management of all shoreline developments and uses shall protect the quality and quantity of surface and ground water on and adjacent to the lot and shall adhere to the guidelines, policies, standards and regulations of applicable water quality management programs and regulatory agencies. Best management practices such as paving and berming of drum storage areas, fugitive dust controls and other good housekeeping measures to prevent contamination of land or water shall be required.*
- B. Solid and liquid wastes and untreated effluents shall not enter any bodies of water or be discharged onto the land.*
- C. Facilities, equipment and established procedures for the containment, recovery and mitigation of spilled petroleum products shall be provided at recreational marinas, commercial moorage, vessel repair facilities, marine service stations and any use regularly servicing vessels with petroleum product capacities of ten thousand five hundred (10,500) gallons or more.*
- D. The release of oil, chemicals or other hazardous materials onto or into the water shall be prohibited. Equipment for the transportation, storage, handling or application of such materials shall be maintained in a safe and leakproof condition. If there is evidence of leakage, the further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected.*
- E. All shoreline developments and uses shall minimize any increases in surface runoff, and control, treat and release surface water runoff so that receiving water quality and shore properties and features are not adversely affected. Control measures may include, but are not limited to, dikes, catchbasins or settling ponds, interceptor drains and planted buffers.*
- F. All shoreline developments and uses shall utilize permeable surfacing where practicable to minimize surface water accumulation and runoff.*
- G. All shoreline developments and uses shall control erosion during project construction and operation.*
- H. All shoreline developments and uses shall be located, designed, constructed and managed to avoid disturbance, minimize adverse impacts and protect fish and wildlife habitat conservation areas including, but not limited to, spawning, nesting, rearing and habitat areas, commercial and recreational shellfish areas, kelp and eel grass beds, and migratory routes. Where avoidance of adverse impacts is not practicable, project mitigation measures relating the type, quantity and extent of mitigation to the protection of species and habitat functions may be approved by the Director in consultation with state resource management agencies and federally recognized tribes.*
- I. All shoreline developments and uses shall be located, designed, constructed and managed to minimize interference with or adverse impacts to beneficial natural shoreline processes such as water circulation, littoral drift, sand movement, erosion and accretion.*
- J. All shoreline developments and uses shall be located, designed, constructed and managed in a manner that minimizes adverse impacts to surrounding land and water uses and is compatible with the affected area.*
- K. Land clearing, grading, filling and alteration of natural drainage features and landforms shall be limited to the minimum necessary for development. Surfaces cleared of*

vegetation and not to be developed shall be replanted. Surface drainage systems or substantial earth modifications shall be professionally designed to prevent maintenance problems or adverse impacts on shoreline features.

- L. All shoreline development shall be located, constructed and operated so as not to be a hazard to public health and safety.*
- M. All development activities shall be located and designed to minimize or prevent the need for shoreline defense and stabilization measures and flood protection works such as bulkheads, other bank stabilization, landfills, levees, dikes, groins, jetties or substantial site regrades.*
- N. All debris, overburden and other waste materials from construction shall be disposed of in such a way as to prevent their entry by erosion from drainage, high water or other means into any water body.*
- O. Navigation channels shall be kept free of hazardous or obstructing development or uses.*
- P. No pier shall extend beyond the outer harbor or pierhead line except in Lake Union where piers shall not extend beyond the Construction Limit Line as shown in the Official Land Use Map, Chapter 23.32, or except where authorized by this chapter and by the State Department of Natural Resources and the U.S. Army Corp of Engineers.*

Given the proximity of the project to the shoreline, best management practices (BMPs) are necessary to ensure protection of nearby bodies of water. Accordingly, the project shall be conditioned to employ appropriate BMPs to prevent debris or deleterious material from entering Lake Washington during the proposed construction.

Development Standards for US Shoreline Environments (SMC.23.60.630)

The development standards set forth in the Urban Stable (US) Shoreline Environment relate to height, maximum size limits, lot coverage, view corridors, public access, and location of uses. The proposal conforms to all applicable development standards for the US environment. Additionally, the proposed use is permitted outright on upland lots in the US environment (SMC 23.60.608).

Development Standards for Neighborhood Commercial Uses (SMC. 23.47)

The project proposal must meet the applicable development standards of the underlying Neighborhood Commercial 1 (NC1) zone.

B. The Provisions of Chapter 173-27 WAC

WAC 173-27 establishes basic rules for the permit system to be adopted by local governments, pursuant to the language of RCW 90.58. It provides the framework for permits to be administered by local governments, including time requirements of permits, revisions to permits, notice of application, formats for permits, and provisions for review by the state's Department of Ecology (DOE). As the Seattle Shoreline Master Program has been approved by DOE, consistency with the criteria and procedures of SMC Chapter 23.60 also is consistency with WAC 173-27 and RCW 90.58.

Summary

Development requiring a Shoreline Substantial Development Permit can be approved only if it conforms to the policies and procedures of the WAC and RCW and is consistent with the regulations of Chapter 23.60 of the Seattle Shoreline Master Program. Given the proximity of the project to the shoreline, best management practices (BMPs) are necessary to ensure consistency with Chapter 23.60. Accordingly, the project shall be conditioned to employ appropriate BMPs to prevent debris or deleterious material from entering Lake Washington during the proposed construction.

The project as proposed meets the specific standards for development in the US environment. It also conforms to the general development standards, as well as to the requirements of the underlying zone.

The Director's authority under Seattle's Shoreline Master Program is to ensure that development proposals are consistent with those policies and procedures, and conforms to specific development standards of the underlying zones. Having established that the proposal is consistent with the Seattle Shoreline Program, it is hereby conditionally approved.

DECISION – SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

The Shoreline Substantial Development Permit is **CONDITIONALLY GRANTED**.

ANALYSIS - SEPA

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant and dated January 3rd, 2012, and annotated by this Department. The information in the checklist, supplemental information provided by the applicant and the experience of the lead agency with review of similar projects form the basis for this analysis and decision.

The SEPA Overview Policy (SMC 25.05.665 D) clarifies the relationship between codes, policies, and environmental review. Specific policies for each element of the environment, certain neighborhood plans, and other policies explicitly referenced may serve as the basis for exercising substantive SEPA authority. The Overview Policy states in part: "where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation" (subject to some limitations). Under certain limitations/circumstances (SMC 25.05.665 D 1-7) mitigation can be considered. Thus, a more detailed discussion of some of the impacts is considered appropriate, and is provided below.

Short-term (construction-related) Impacts

The following temporary or construction-related impacts are expected: decreased air quality due to suspended particulates from construction activities and hydrocarbon emissions from construction vehicles and equipment; increased traffic and demand for parking from construction equipment and personnel; increased noise; and consumption of renewable and non-renewable resources.

Several adopted codes and/or ordinances provide mitigation for some of the identified impacts. The Stormwater, Grading and Drainage Control Code regulates site excavation for foundation purposes and requires that soil erosion control techniques be initiated for the duration of construction. Puget Sound Clean Air Agency (PSCAA) regulations require control of fugitive dust to protect air quality. The Noise Ordinance regulates the time and amount of construction noise that is permitted in the City.

The SEPA Overview Policy (SMC 25.05.665) and the SEPA Construction Impacts Policy (SMC 25.05.675 B) allow the reviewing agency to mitigate impacts associated with construction activities. Most short-term impacts are expected to be minor, and compliance with the applicable codes and ordinances mentioned above will reduce or eliminate the adverse short-term impacts to the environment. Construction-related noise impacts are discussed further below.

Any conditions to be enforced during construction shall be posted at each street abutting the site in a location on the property line that is visible and accessible to the public and to construction personnel from the street right-of-way. The conditions shall be affixed to placards prepared by DPD. The placards will be issued along with the building permit set of plans. The placards shall be laminated with clear plastic or other waterproofing material and shall remain posted on the site for the duration of construction.

Noise

The proposal site is located in the midst of a residential area where construction of this scale would impact the noise levels. The SEPA Construction Impacts Policy lists mitigation measures for construction noise impacts. It is the department's conclusion that, due to the proximity of neighboring residences, limiting hours of construction beyond the requirements of the Noise Ordinance is necessary to mitigate impacts on surrounding properties, because existing City ordinances do not adequately mitigate such impacts. Therefore, the proposal is conditioned to limit construction activity, other than those taking place within an enclosed building, to non-holiday weekday hours between 7:00 AM and 6:00 PM and Saturdays from 9:00 to 6:00 PM. Additionally, the use of noise impact-type equipment, such as pavement breakers, pile drivers, jackhammers, sand blasting tools and other impulse noise sources shall be restricted to the hours of 8:00 AM to 5:00 PM on weekdays. Interior construction may be done in compliance with the noise ordinance. The department may modify this condition to allow work of an emergency nature or to permit low-noise exterior work (e.g., installation of landscaping), following written approval from the Land Use Planner.

Long-term (operational) Impacts

Long-term or use-related impacts are anticipated as a result of approval of this proposal. These impacts include increased traffic and parking in the vicinity of the project; impacts to air from vehicle exhaust; increased demand on public services and utilities and increase energy consumption; increased noise; increased light and glare; and risk of run-off from the site into Lake Washington. The Stormwater Code establishes standards for run-off; application of this code will provide mitigation for potential run-off impacts. These long-term impacts are not considered significant, and most of them are expected to be minor. Additional discussion of transportation and parking impacts is provided below.

Transportation and Parking

A traffic and parking analysis for this project was submitted by William Popp Associates. The analysis estimated the amount of additional vehicle traffic that the project would generate, and documented the likely impacts of this additional traffic at the site driveway. It also compared likely project parking demand with the parking supply.

The project is estimated to generate approximately 502 vehicle trips during a typical weekday. About 46 of these would be during the AM peak hour, and about 44 during the PM peak hour. Almost half of these trips are forecast to already be on the roadway system (“pass-by” trips). The traffic analysis demonstrated that the intersection of the site access driveway with Rainier Avenue S would operate acceptably during both the AM and PM peak hours. No mitigation of project transportation impacts is warranted pursuant to SEPA.

The analysis also estimated the likely peak parking demand, and compared this demand to the project’s proposed parking supply. The analysis utilizes data from the Institute of Transportation Engineers Parking Generation manual (4th edition) drawn from similar eating and drinking establishments. Based on these data, a restaurant of this square footage would be expected to generate a peak parking demand of approximately 28 vehicles. (The William Popp analysis also estimates parking demand based on numbers of seats in the restaurant; however, these data all were drawn from suburban locations, and are not expected to result in as accurate a forecast as the parking demand estimates based on square footage.)

At peak times, the project is expected to produce a spillover parking demand of about 11 vehicles. On-street parking is permitted on the east side of Rainier Avenue S both north and south of the site. Given current levels of on-street parking demand in the vicinity of the site, parking capacity along Rainier Avenue S is expected to be sufficient to accommodate the expected parking spillover. However, all the on-street parking is on the opposite side of Rainier Avenue S from the project, requiring patrons or employees that use on-street parking to cross Rainier going both to and from their cars. Currently, a striped crosswalk extends across Rainier Avenue S on the north leg of the Rainier/S Pilgrim Street intersection.

Pedestrians crossing a major arterial such as Rainier Avenue S, particularly at night, present potential safety concerns. To mitigate these concerns and increase safe pedestrian crossings of Rainier Avenue S, the following conditions will be placed on the project:

1. Repaint the existing crosswalk on the north leg of Rainier/Pilgrim;
2. Install R1-5b, “stop here for peds” signs for both the northbound and southbound directions of travel along Rainier Avenue S;
3. Install stop bars along Rainier Avenue S for both directions in conjunction with the signs above.

These capital improvements at the Rainier/Pilgrim crosswalk are expected to result in safer crossing conditions than currently exist.

DECISION - SEPA

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirements of the State Environmental Policy Act (RCW 43.21C), including the requirement to inform the public of agency decisions pursuant to SEPA.

- [X] Determination of Non-Significance. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21C.030 2C.
- [] Determination of Significance. This proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21C.030 2C.

CONDITIONS - SEPA

During Construction

The following condition(s) to be enforced during construction shall be posted at the site in a location on the property line that is visible and accessible to the public and to construction personnel from the street right-of-way. If more than one street abuts the site, conditions shall be posted at each street. The conditions will be affixed to placards prepared by DPD. The placards will be issued along with the building permit set of plans. The placards shall be laminated with clear plastic or other weatherproofing material and shall remain in place for the duration of construction.

1. In order to mitigate the noise impacts during construction, the owner(s) and/or responsible party(ies) shall limit the hours of construction to non-holiday weekdays between 7:00 AM and 6:00 PM and on Saturdays from 9:00 AM to 6:00 PM. Additionally, the use of noise impact-type equipment, such as pavement breakers, pile drivers, jackhammers, sand blasting tools and other impulse noise sources shall be restricted to the hours of 8:00 AM to 5:00 PM on weekdays. Interior work may proceed at any time in compliance with the Noise Ordinance. The Department may modify this condition to allow work of an emergency nature or to permit low-noise exterior work (e.g., installation of landscaping), following written approval from the Land Use Planner.

Prior to Certificate of Occupancy

The following improvements shall receive design approval from and be installed in coordinated with the Seattle Department of Transportation:

2. Repaint the existing crosswalk on the north leg of Rainier Avenue S/S Pilgrim Street.
3. Install R1-5b, "stop here for peds" signs for both the northbound and southbound directions of travel along Rainier Avenue S.

4. Install stop bars along Rainier Avenue S for both directions in conjunction with the signs above.

CONDITIONS - SHORELINE

During Construction

5. The project shall employ appropriate best management practices to prevent debris or deleterious material from entering Lake Washington during the proposed work.

Signature: _____ (signature on file) Date: September 20, 2012
John Shaw, Senior Transportation Planner
Department of Planning and Development

JS:drm

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